IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6728 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DY. EXECUTIVE ENGINEER - Petitioner(s)

Versus

DHOLAKIA GORDHANBHAI KARSANBHAI - Respondent(s)

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Appearance :
Shri Premal R. Joshi for Petitioner(s).
Shri T.R. Mishra for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/06/2007

ORAL JUDGMENT

1. In the present matter, the respondent-workman was terminated on 1st July, 1986, as alleged by the petitioner, though the present petitioner-employer said that the workman left of his own

accord. Be that as it may. In the reference, the workman was examined and he stated before the Court that he had worked for more than 240 days in the calendar month just preceding the date of retrenchment or termination, however, the records/muster rolls for the months of July to September, 1985 were not produced in the Court.

1.1 After hearing the parties, the learned Labour Court held that the petitioner in the earlier years had worked for more than 240 days and complete records/muster rolls have not been filed by the employer; it also held that the workman had not worked for more than 240 days in twelve calendar months just preceding the date i.e. date of retrenchment. The learned Labour Court, accordingly, directed reinstatement of the respondent-workman, being aggrieved by the said award the petitioner-employer is before this Court.

2. Shri Premal R. Joshi, learned Counsel for the petitioner, submits that the learned Court below was absolutely unjustified in not appreciating that the burden to prove that the workman had worked for 240 or more days in twelve calendar months just preceding the date of retrenchment was upon the workman and that no duty was cast upon the present petitioner-employer to produce the muster rolls. He placed his strong reliance upon a Division Bench judgement of this Court in the matter of ***The Executive Engineer (Mechanical) vs. Shri Chetan P. Oza***,

2005 (2) G.L.H. 742. It is contended that if the petitioner failed in proving that he had worked for 240 or more days in twelve calendar months just preceding the date of retrenchment, then, the order for reinstatement or payment of wages from the date of retrenchment/termination could not be made.

3. Shri T.R. Mishra, learned Counsel for the respondent-workman, however, submits that controverting the oral statement made by the present workman, the petitioner-employer did not make any statement before the learned Labour Court, therefore, the Labour Court was justified in relying upon the oral statement of the workman and further justified in holding that the workman had proved that he worked for 240 or more days in twelve calendar months just preceding the date of retrenchment. His further submission is that the defences raised by the petitioner-employer cannot be taken into consideration, especially, when the defences were not proved by asking any witness to step in the witness box.

4. I have heard the parties.

5. In the matter of ***The Executive Engineer (Mechanical)*** [*supra*], the Division Bench has relied upon a judgement of the Supreme Court in the matter of ***Mohan Lal vs. Bharat Electronics Limited, 1981***

(3) SCC 225, and distinguished the judgement of the Apex Court in the matter of ***U.P. Drugs & Pharmaceuticals Co. Ltd. vs. Ramanuj Yadav & Ors., 2004 SCC (L&S) 46***, holding that the provisions of the Industrial Disputes Act, 1947 and the provisions of the U.P. Act were different. The Division Bench further held that the provisions of the U.P. Act could not be bodily lifted from the U.P. Act and the same could not be read in the Industrial Disputes Act, 1947.

6. In the present matter, undisputedly, the workman, on the calculation of the learned Labour Court, had worked for 203 days only in twelve calendar months just preceding the date of retrenchment. The burden to prove and summon the records to prove that the workman had worked for more than 240 days within twelve calendar months just preceding the date of retrenchment, etc. was upon the original applicant i. e. the workman/respondent. Even if I assume that the dispute was to be treated *ex parte*, then too, the burden would continue to be upon the workman to prove that he worked for 240 or more days in twelve calendar months just preceding the date of retrenchment. In the present case, the workman did not summon the witness from the Establishment for production of the records nor summoned the records to prove his case that he had worked for few days in the months of July, August or September, 1985 to make the total of 240 working days. In a case where the workman did not summon the original records, no adverse inference

could be drawn against the present petitioner-employer. In any case, the workman had to discharge the burden.

7. It is also to be noted that oral evidence in relation to a fact would not be admitted and relied upon by a Court if the fact could be proved by producing the documents. In the present case, the learned Labour Court could not rely upon the oral evidence led by the workman to presume that the respondent-workman had worked for more than 240 days.

8. Taking into consideration the legal position and the evidence available on record, I must hold that the workman had failed in discharging the burden cast upon him. The award deserves to and is, accordingly, quashed.

9. Shri T.R. Mishra, learned Counsel for the workman, however, submits that if this Court is of the opinion that the records were required to be summoned by the workman, then, the matter be remitted back to the lower Court with permission in favour of the workman to make an application to the learned Labour Court for summoning the records.

10. Though Shri Premal R. Joshi, learned Counsel for the

petitioner, opposes the prayer, but, take into consideration the totality of the circumstances and the stakes involved in the matter, I am of the opinion that the matter should go back to the learned Labour Court to give an opportunity to the present respondent-workman to summon the records and prove his case.

11. The Writ Application is allowed with a direction that the parties present in the Court shall appear before the learned Labour Court on 25th July, 2007. It shall be the duty of the learned Counsel for the respondent-workman to file a copy of this order before the learned Labour Court, enabling it to know as to what it is required to do. If an application for summoning the records is made by the workman, then, the learned Labour Court shall decide the application on its own merits. It is expected of the learned Labour Court that it shall finally dispose of the matter within a period of six months from the date of appearance of the parties.

Rule is made absolute to the extent indicated above. No costs.

[R.S.Garg, J.]

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